

EXHIBIT D

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re: : Docket #1:20-cr-00234-
UNITED STATES OF AMERICA, : LAP-4
Plaintiff, :
- against - :
COOKS, COUNT, : New York, New York
September 25, 2020
Defendant. :
----- : REMOTE ARRAIGNMENT
----- : AND PRESENTMENT

PROCEEDINGS BEFORE
THE HONORABLE JUDGE SARAH NETBURN,
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

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Proceedings conducted via video and teleconference and
recorded by electronic sound recording;
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<u>Witness</u>	<u>Direct</u>	<u>Cross</u>	<u>Re-Direct</u>	<u>Re-Cross</u>
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None

E X H I B I T S

<u>Exhibit Number</u>	<u>Description</u>	<u>ID</u>	<u>In</u>	<u>Voir Dire</u>
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None

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THE CLERK: Your Honor, this is the matter of
United States v. Count Cooks, 20-cr-234.

4

And starting with the government, would you please
state your appearance for the record?

6

MR. ADAM HOBSON: Good afternoon, your Honor; Adam
Hobson for the government.

8

HONORABLE SARAH NETBURN (THE COURT): Good
afternoon.

10

MR. DARREN LAVERNE: And good afternoon again,
your Honor. This is Darren LaVerne for Mr. Cooks.

12

THE COURT: Thank you. Good afternoon. And good
afternoon, Mr. Cooks. My name is Judge Netburn.

14

MR. COUNT COOKS (THE DEFENDANT): Good afternoon.

15

THE COURT: I'll remind everybody that this is a
public proceeding and that members of the press and the
public are able to call in on a call-in line. All
participants are reminded that any recording or
rebroadcasting of this proceeding is strictly prohibited.

20

We are here for the initial presentment. And has
this matter been referred for an arraignment, as well?

22

MR. HOBSON: Yes, your Honor.

23

THE COURT: Okay. -- for the initial presentment
and arraignment and any bail argument for the defendant,
Count Cooks. Because of the COVID-19 pandemic, we're

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2 conducting this proceeding remotely pursuant to the
3 authority provided by Section 15002 of the CARES Act and
4 the standing orders issued by our chief judge pursuant to
5 that Act. I am proceeding by video conference, and I myself
6 am outside of the district. The defendant is also
7 appearing by video conference, and I can see him.

8 Sir, can you see and hear me?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: Okay. Defense counsel and counsel for
11 the government are appearing by telephone, as is a
12 representative from our Pretrial Services office.

13 Sir, you have the right to appear in court before
14 a judge for this presentment and arraignment; however, the
15 law allows you to consent to proceed with a remote
16 proceeding on your approval. Have you had an opportunity to
17 discuss this with your lawyer?

18 THE DEFENDANT: Yeah.

19 THE COURT: Mr. LaVerne, did you have any
20 opportunity to talk to your client about that he could
21 waive his right to appear in public and whether he consents
22 to proceed by remote means?

23 MR. LAVERNE: Yes, your Honor, we did discuss the
24 issue earlier, and Mr. Cooks is prepared to proceed by
25 video.

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THE COURT: Very well. And, sir, I have a form
that your lawyer has signed on your behalf. I just want to
make sure that you do agree to proceed with this proceeding
remotely.

6

THE DEFENDANT: Yes, ma'am.

7

THE COURT: Okay. Thank you.

8

Can I have the date and time of the defendant's
arrest?

10

MR. HOBSON: Yes, your Honor. The defendant was
arrested yesterday, September 24, at approximately
11:30 a.m.

13

THE COURT: Thank you.

14

Sir, the purpose of today's proceeding is to
advise you of certain rights that you have, inform you of
the charges against you, consider whether counsel shall be
appointed for you, and decide under what conditions if any
you shall be released.

19

I'm now going to explain certain constitutional
rights that you have. You have the right to remain silent.
You are not required to make any statements. Even if you
have already made statements to the authorities, you need
not make any further statements; and any statements that
you do make can be used against you.

25

You have the right to be released, either

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2 conditionally or unconditionally, pending trial unless I
3 find that there are no conditions that would reasonably
4 assure your presence in court or the safety of the
5 community.

6 You have the right to be represented by an
7 attorney during all court proceedings, including this one,
8 and during all questioning by the authorities. If you
9 cannot afford an attorney, I will appoint one today to
10 represent you. And I have reviewed your Financial
11 Affidavit, and based on the information contained in that
12 affidavit, I'm approving the appointment of your counsel.

13 Sir, you've been charged in a multicount
14 indictment. I want to go over those counts briefly. You've
15 been charged in Count One with participating in a
16 racketeering conspiracy. That charge is brought under
17 Title 18 U.S.C. § 1962(d). You are further charged in Count
18 Four with assault with a dangerous weapon in aid of
19 racketeering, and that is a violation of Title § 1959(a) (3)
20 and (2). In Count Five you're charged with Hobbs Act
21 robbery, which is a violation of Title 18 U.S.C. §§ 1951
22 and 2. Count Six charges you with use of a firearm in
23 furtherance of a crime of violence. That is a violation of
24 Title 18 U.S.C. § 924(c) (1) (A) (i) (ii) and 2. And Count Ten
25 charges you with narcotics trafficking, which is a

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2 violation of Title 21 § 846. Count Eleven charges you with
3 a firearm offense, which is a violation of Title 18 U.S.C.
4 §§ 1924(c)(1)(A)(i)(ii)(iii) and 2.

5 Mr. Cooks, have you had an opportunity to discuss
6 this indictment with your lawyer?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: Do you understand the nature of the
9 charges?

10 THE DEFENDANT: Yes, I understand the nature of
11 the charges.

12 THE COURT: Okay, you have the right to have me
13 read this indictment to you in open court, but you can also
14 waive that right and you don't need me to read it to you.
15 But if you'd like, I can read this to you.

16 MR. LAVERNE: Your Honor, I've just -- you know,
17 I've been through it in more detail with Mr. Cooks, and
18 we're prepared to enter a plea of not guilty and waive the
19 public reading.

20 THE COURT: Okay. Very well. So I'll enter a plea
21 of not guilty to these charges, sir.

22 THE DEFENDANT: Yes.

23 THE COURT: Counsel, are you prepared to make a
24 bail application at this time?

25 MR. LAVERNE: Yes, your Honor.

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2 THE COURT: All right, let me hear from the
3 government first.

4 MR. HOBSON: Yes, your Honor, we're seeking
5 detention in this case, both on dangerousness and risk of
6 flight. Obviously, this is a presumption case, given the
7 seriousness of the charges that the Court just reviewed
8 with the defendant and the defendant can't rebut the
9 presumption here.

10 I know that the Court is generally familiar with
11 the Clay Avenue Mac Ballers gang because one of the other
12 defendants, Davonte Francis, was presented a couple of days
13 ago; but I just want to review some of the facts for the
14 Court. The Clay Avenue Mac Ballers are a violent set of the
15 Mac Ballers gang. They're based on Clay Avenue in the
16 Bronx. They sell a large amount of crack, they do
17 robberies, and they commit violence against rival gang
18 members. Their main rivals are the Rollin' 30s Crips, which
19 is a Crips that operates near them. They routinely fight
20 over gang beats and drug territory because it's a very
21 valuable drug territory.

22 Just as one example, in May 2018, one of the Clay
23 Avenue Macs, who's a fellow defendant of the defendant
24 here, murdered one of the rival Rollin' 30s Crips. He's on
25 the indictment, and he's still a fugitive.

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2 This particular defendant, Mr. Cooks, has also
3 shot at members of the Rollin' 30s Crips, although
4 fortunately, at least for the shooting that we're aware of,
5 he does not appear to have killed anyone. Mr. Cooks also
6 sells crack for the gang. He sells approximately 50 bags of
7 crack a day, which is a very large amount. He's also known
8 to carry a gun with him while he sells crack. In addition
9 to carrying a gun while he sells crack, he also uses guns
10 to commit robberies for the gang. He's charged with one of
11 those robberies here, which was a gunpoint robbery of a
12 drug dealer.

13 The defendant has a large social media presence,
14 which he routinely uses to promote the gang, to sell drugs
15 and to talk about guns. He's a rap artist and raps about
16 gang membership frequently. One of his rap songs brags
17 about how long he has been in the gang and criminal
18 activity he's been committing since a very early age. It
19 includes the line, "Thirteen, I was selling packs; 15, I
20 was in the trap; 17, clapped my first." In other words, he
21 was selling packs of drugs at age 13, he was running the
22 trap-house apartments at age 15; and he shot his first
23 person or committed his first act of violence at age 17. As
24 the Court saw --

25 THE COURT: I'm familiar -- I'm going to interrupt

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2 you. Sorry, can I just interrupt you for one second?

3 MR. HOBSON: Sure.

4 THE COURT: Mr. Cooks, I see you raising your
5 hand, indicating you'd like to speak. I think your lawyer
6 would prefer that you not speak and that you let your
7 lawyer speak on your behalf. If you'd like, I can make
8 arrangements for you and your lawyer to speak before we're
9 done; but it's probably better if you let your lawyer speak
10 on your behalf, okay?

11 THE DEFENDANT: All right.

12 THE COURT: Okay. If your lawyer would like to say
13 anything or give different advice, obviously I don't want
14 to speak for your lawyer.

15 MR. LAVERNE: No, I agree with that advice. And I
16 just want to, again, remind Mr. Cooks that this is simply
17 the government reciting its allegations in the case.

18 THE DEFENDANT: Okay.

19 THE COURT: All right, sorry. The government can
20 continue.

21 MR. HOBSON: That's fine, your Honor.

22 As is clear in the pretrial report, this is not
23 his first offense. He had a Youthful Offender adjudication
24 for both robbery and for burglary. He's been on probation
25 for that. While he was on probation for those offenses, he

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2 was continuing to be a member of the gang, to commit
3 violence on behalf of the gang, to commit this robbery
4 that he's charged with, and selling drugs. He has repeated
5 arrests in addition to those robberies and burglaries --
6 to those convictions, none of which have deterred him from
7 continuing his criminal activity.

8 I want to turn to risk of flight, which I think
9 is a very strong concern here. We indicted this case in
10 April, and it was unsealed when we arrested a number of
11 his codefendants. The defendant, however, has been a
12 fugitive since April. We went everywhere back in April
13 looking for him. We went to his grandmother, we went to
14 his girlfriend, we went to the friend whose apartment he
15 was arrested in today. We told everyone that he needed to
16 turn himself in, that he had a federal warrant out for his
17 arrest and that he was charged in these very serious
18 offenses. Every time we got a phone number for the
19 defendant, we went up on that phone number, and he dropped
20 that phone number. He kept posting to social media
21 throughout this time, but he was almost always using
22 public Wi-Fi networks, so we couldn't locate his precise
23 location.

24 During that time I think it's interesting that
25 one of the posts he made was a new music video. That

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2 music video was called, "I'm a Fugitive," and it featured
3 the line, "I'm a fugitive, but I'm still doing shit,"
4 showing that he was clearly aware that he was wanted by
5 the federal government and that he was still on the run
6 but committing crimes nonetheless. Last week he finally
7 slipped up and made a Facebook post using a new cell phone
8 that he had just activated while he was down in
9 Greensboro, North Carolina. I should note that in the
10 Pretrial Report it appears that he was actually arrested
11 last week in Greensboro, North Carolina, but used a fake
12 identification card in another name. A few days after he
13 made that Facebook post, he made another post of a video
14 which was taken from his grandmother's apartment up here
15 in the Bronx. So he came from Greensboro back up to the
16 Bronx. We were able to get a trigger fish on that phone
17 number earlier this week, and then we finally got him
18 yesterday after six months of looking for him, frankly,
19 because we got lucky that he made a Facebook post using
20 that new phone.

21 It's obvious why he's fleeing here. He's facing a
22 27-year mandatory minimum and a potential sentence of
23 life. But even with that hanging over him, as he admits in
24 his rap song, he's still out there doing crimes, and he's
25 still on the run. There's nothing keeping him here. He has

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2 no job, he's not in school. It's not clear he even has a
3 residence. I think, according to his grandmother's
4 statement in the Pretrial Report, he just runs the streets.
5 Given this, we have no confidence that he will -- we have
6 no way to assure that he will not flee again or that he
7 will not continue committing crimes. For those reasons, we
8 don't think the presumption can be rebutted here.

9 THE COURT: Thank you. I'll hear from the defense
10 now.

11 MR. LAVERNE: Thank you, your Honor. We think that
12 there are ways here to release Mr. Cooks and address the
13 government's concerns. Just sort of in terms of bottom-line
14 proposal, we're proposing that he be released with home
15 detention, an ankle bracelet and three cosigners.

16 I just want to highlight up front, your Honor,
17 that Mr. Cooks does have chronic asthma, which makes him
18 particularly susceptible to COVID, notwithstanding his
19 younger age. And I think that probably distinguishes his
20 case from the other defendants who have come before you.
21 And I think it's reason, you know, to find here if there
22 is a way to release him consistent with the concerns of
23 the bail statute, we really should make every effort to do
24 that so that his health is not at risk.

25 Look, I recognize the very serious nature of the

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2 allegations that are in the indictment. Of course, they are
3 just allegations at this time, allegations that we deny. I
4 would point out that in the indictment there is a murder
5 which is mentioned by the government, and there's other
6 allegations. With respect to Mr. Cooks, there really is
7 only one specific allegation, which is a robbery that took
8 place two years ago when he was 18 years old.

9 On the government's proffer of evidence regarding
10 everything else, I heard stuff about social media posts, I
11 heard stuff about rap lyrics, but I heard nothing about
12 hard evidence that really show that Mr. Cooks was involved
13 in violence and drug dealing as alleged in the indictment.
14 Look, I think it's one thing -- and I'm sure we'll have
15 this fight down the road as to whether rap lyrics are good
16 evidence here, but people rap about all kinds of things.
17 And I don't think that sitting here at a bail hearing right
18 now, that's cause to keep Mr. Cooks in custody.

19 Mr. Cooks is 20 years old. He does have a stable
20 residence with his grandmother. We heard from the
21 prosecutor that his grandmother apparently said he runs the
22 streets, but I think that the Pretrial Report also noted
23 that he does stay consistently at his grandmother's house.
24 That's where he lives with his grandmother and his younger
25 sister. He is not working at present, but he has worked

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2 over the last few years, including working at a job as a
3 counselor mentoring younger kids in the neighborhood.
4 That's a job that he had for some time and on a sort of
5 volunteer basis and then was hired to do it and paid for
6 his work at Bronx Connect. He's also been taking classes.
7 He got his GED recently, showing that he does have ambition
8 to move on in this world.

9 We have spoken, your Honor -- we didn't have a lot
10 of time to sort of canvass his relations and his family,
11 but we were able quite quickly to reach three people who
12 are close to him who are willing to sign a bond, which I
13 think says a lot. We've spoken to his girlfriend of three
14 years; we've spoken to another close friend of his; and
15 we've spoken to the aunt of his girlfriend. All three of
16 these people are working and are responsible, you know,
17 citizens of this country. And, you know, I'm happy to
18 proffer more information about them, but I think they would
19 serve as good cosigners on a package here.

20 I do want to address also, just briefly, the
21 question -- the issue that was raised about flight concerns
22 and him being down in North Carolina. I actually -- look, I
23 mean, he did return -- I don't think the government
24 disputes that he was in North Carolina, but he did return
25 to New York on his own volition. My understanding, that he

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2 was down in North Carolina because he has an aunt there who
3 is ailing, and he was visiting her. And to me, the fact
4 that he came back to New York, even under the government's
5 theory aware that there was this indictment pending and
6 others had been arrested, shows that in actuality he's not
7 a flight risk. And he really has nowhere else to go. His
8 life, his whole life has been spent in the vicinity of the
9 Bronx, living with his grandmother. And, your Honor, I
10 would respectfully propose that a package that is strict
11 home detention, doesn't allow him out of the house; with
12 three people close to him signing on a bond would address
13 the concerns raised by the government and also keep
14 Mr. Cooks safe while this case is pending and keep him out
15 of harm's way in terms of COVID, given his asthma
16 condition.

17 THE COURT: Thank you, counsel; I appreciate that.

18 Anything that the government wants to say in
19 response?

20 MR. HOBSON: Your Honor, if there are particular
21 issues you would like me to address, I'm happy to; but I
22 don't think any of that comes close to rebutting the
23 presumption, and I'll just rest on what I said earlier.

24 THE COURT: Great. Thank you very much, everybody.
25 Thank you for your arguments. I appreciate them. They were

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2 very strong.

3 I've reviewed the indictment, and I have reviewed
4 the Pretrial Services Report and also listened to counsels'
5 arguments to me today. Based on everything that I have
6 before me, I do not believe that the defendant has rebutted
7 the presumption and believe that the Bail Reform Act
8 mandates that I detain the defendant, that he cannot be
9 released under any conditions that will satisfy me that he
10 won't be either a danger to the community or a flight risk.
11 So I am ordering him detained.

12 Anything further on this case?

13 MR. HOBSON: Your Honor, if I can just state for
14 the record that our next conference before Judge Preska is
15 currently scheduled for November 10th. Time has been
16 excluded under the Speedy Trial Act already until that
17 date. And I've been in touch with defense counsel about
18 discovery; it's ready to be produced as soon as he provides
19 us a hard drive.

20 THE COURT: Excellent. All right. Anything --

21 MR. LAVERNE: And, your Honor --

22 THE COURT: -- from defense? Yes?

23 MR. LAVERNE: Yes, I'm sorry to cut you off, your
24 Honor.

25 Yes, I did hand up a medical form --

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2 THE COURT: I have it.

3 MR. LAVERNE: -- and I'd just ask that your Honor
4 sign it. Thank you.

5 THE COURT: Yes, I have it, and it has been
6 signed.

7 MR. LAVERNE: Appreciate it.

8 THE COURT: Okay. Do you want to speak to your
9 lawyer?

10 THE DEFENDANT: Yes.

11 THE COURT: Okay. I'm going to adjourn.

12 Ms. Plecher, if you can just make arrangements so that
13 Mr. Cooks and his lawyer can speak before they separate?

14 THE CLERK: Okay, your Honor.

15 THE COURT: Okay. Thank you, everybody. Stay
16 safe.

17 (Whereupon, the matter is adjourned.)

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3 C E R T I F I C A T E
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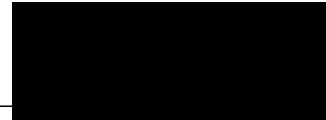
5 I, Carole Ludwig, certify that the foregoing
6 transcript of proceedings in the case of USA v. Cooks,
7 Docket # 20-cr-00234-LAP-4, was prepared using digital
8 transcription software and is a true and accurate record of
9 the proceedings.

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13 Signature _____

A large black rectangular redaction box covering the signature area.

14 Carole Ludwig

15 Date: January 12, 2021

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